

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: IDAHO

REQUIREMENTS FOR ADVANCE DIRECTIVES UNDER STATE PLANS FOR
MEDICAL ASSISTANCE

The following is a written description of the law of the State (whether statutory or as recognized by the courts of the State) concerning advance directives. If applicable States should include definitions of living will, durable power of attorney for health care, durable power of attorney, witness requirements, special State limitations on living will declarations, proxy designation, process information and State forms, and identify whether State law allows for a health care provider or agent of the provider to object to the implementation of advance directives on the basis of conscience.

The State of Idaho has enacted the Natural Death Act, I.C. 39-4502.

The State of Idaho recognizes the right of a competent person to have his wishes for medical treatment and for the withdrawal of artificial life sustaining procedures carried out even though that person is no longer able to communicate with the physician. To accomplish this, the State of Idaho established the Living Will as an effective means for such communication.

Idaho Code under the Natural Death Act, I.C. 39-4502 definition of a "Competent person" means any emancipated minor or any person eighteen (18) or more years of age who is of sound mind.

The Natural Death Act, I.C. 39-4502, defines "Durable power of attorney for health care" as a durable power of attorney to the extent that it authorizes an attorney in fact to make health care decisions for the principal.

Any competent person may execute a document known as a "living will." A copy of a "Living Will" is attached for your information.

In order to implement the general desires of a person as expressed in the "living will," a competent person may appoint any adult person to exercise a durable power of attorney for health care. The power shall be effective only when the competent person is unable to communicate rationally. The person granted the durable power of attorney for health care may make health decisions for the person to the same extent that the principal could make such decisions given the capacity to do so.

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The durable power of attorney for health care may list alternative holders of the power in the event that the first person named is unable or unwilling to exercise the power.

In Idaho Code, 39-4506, regarding revocation, it states, "A directive may be revoked at any time by the maker thereof, without regard to his mental state or competence, by any of the following methods:

(a) By being cancelled defaced, obliterated or burned, torn or otherwise destroyed by the maker thereof or by some person in his presence and by his direction.

(b) By a written, signed, revocation of the maker thereof expressing his intent to revoke.

(c) by a verbal expression by the maker thereof of his intent to revoke the directive.

There shall be no criminal or civil liability on the part of any person for failure to act upon a revocation of a directive made pursuant to this section unless that person has actual knowledge of the revocation."

Regarding immunity and statement of conscience, Idaho Code 39-4500 states, "No physician or health facility, which, acting in accordance with the wishes of a patient as expressed by the procedures set forth in this chapter, causes the withholding or withdrawal of artificial life-sustaining procedures from that patient, shall be subject to civil liability or criminal liability therefrom.

Any physician or other health care provider who for ethical or professional reasons is incapable or unwilling to conform to the desires of the patient as expressed by the procedures set forth in this chapter may withdraw without incurring any civil or criminal liability provided the physician or other health care provider makes a good faith effort to assist the patient in obtaining the services of another physician or other health care provider before withdrawal. No person who exercises the responsibilities of a durable power of attorney for health care in good faith shall be subject to civil or criminal liability as a result."

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